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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

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10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 DANIEL CAPEN,

18 Defendant.

No. SACR18-00124 JLS

PLEA AGREEMENT FOR DEFENDANT
DANIEL CAPEN

20 1. This constitutes the plea agreement between DANIEL CAPEN
21 ("defendant") and the United States Attorney's Office for the Central
22 District of California ("the USAO") in the above-captioned case.
23 This agreement is limited to the USAO and cannot bind any other
24 federal, state, local, or foreign prosecuting, enforcement,
25 administrative, or regulatory authorities.

26 DEFENDANT'S OBLIGATIONS

27 2. Defendant agrees to:

28 a. Give up the right to indictment by a grand jury and,

1 at the earliest opportunity requested by the USAO and provided by the
2 Court, appear and plead guilty to counts one and two of an
3 information in the form attached to this agreement as Exhibit A or a
4 substantially similar form (the "information"), which charges
5 defendant with conspiracy, in violation of 18 U.S.C. § 371, and
6 Receipt of Kickbacks in Connection with a Federal Health Care
7 Program, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with Pretrial Services, the
19 United States Probation Office, and the Court.

20 g. Pay the applicable special assessments at or before
21 the time of sentencing unless defendant lacks the ability to pay and
22 prior to sentencing submits a completed financial statement on a form
23 to be provided by the USAO.

24 h. Not seek the discharge of any restitution obligation,
25 in whole or in part, in any present or future bankruptcy proceeding.

26 i. Defendant understands and acknowledges that as a
27 result of pleading guilty pursuant to this agreement, defendant will
28 be excluded from Medicare, Medicaid, and all Federal health care

1 programs. Defendant agrees to complete and execute all necessary
2 documents provided by the United States Department of Health and
3 Human Services, or any other department or agency of the federal
4 government, to effectuate this exclusion within 60 days of receiving
5 the documents. This exclusion will not affect defendant's right to
6 apply for and receive benefits as a beneficiary under any Federal
7 health care program, including Medicare and Medicaid.

8 3. Defendant further agrees:

9 a. To forfeit the sum of \$5,000,000.00 (five million
10 dollars) (the "Forfeitable Property"), which Forfeitable Property
11 defendant agrees (1) constitutes or is derived from proceeds
12 traceable to violations of 18 U.S.C. §§ 371, including the objects of
13 the conspiracy, and 42 U.S.C. § 1320a-7b(b); (2) was used to
14 facilitate and was involved in violations of 18 U.S.C. §§ 371,
15 including the objects of the conspiracy, and 42 U.S.C. § 1320a-7b(b);
16 and (3) shall, at the sole election of the United States of America,
17 be criminally forfeited or civilly forfeited, administratively or
18 judicially, pursuant to 18 U.S.C. § 981, 18 U.S.C. § 982, 28 U.S.C.
19 § 2461, or otherwise.

20 b. To withdraw any claim defendant may have submitted to
21 any federal agency in any administrative forfeiture proceedings
22 commenced by that agency with respect to the Forfeitable Property.
23 Defendant further waives his rights, if any, to any initial or
24 further notice relative to any administrative forfeiture proceedings.
25 Defendant understands, acknowledges, and agrees that the Forfeitable
26 Property shall, at the sole election of the United States of America,
27 be administratively forfeited to the United States of America without
28 any further notice.

1 c. To pay the Forfeitable Property to the United States
2 of America, at least in part, as follows:

3 (i) within sixty (60) days of defendant's execution
4 of this plea agreement, defendant shall pay \$2,000,000 (two million
5 dollars) by, at the United States of America's sole option

6 (1) delivering to the USAO a cashier's check payable in that amount
7 to the government entity identified in writing by the USAO, or (2)
8 wire transferring the funds to an account designated in writing by
9 the USAO; and

10 (ii) At least thirty (30) days before defendant's
11 sentencing, defendant shall pay \$1,500,000 million (one million five
12 hundred thousand dollars) by, at the United States of America's sole
13 option (1) delivering to the USAO a cashier's check payable in that
14 amount to the government entity identified in writing by the USAO, or
15 (2) wire transferring the funds to an account designated in writing
16 by the USAO.

17 d. To refrain from contesting the forfeiture (by filing a
18 claim, statement of interest, petition for an ancillary proceeding,
19 petition for remission or otherwise) of the Forfeitable Property in
20 any administrative or judicial proceeding, or assisting any other
21 person or entity in falsely contesting the forfeiture of the
22 Forfeitable Property in any administrative or judicial proceeding.

23 e. To take all steps necessary to pass to the United
24 States of America clear title to the Forfeitable Property, including,
25 without limitation, the execution of consent judgments of forfeiture,
26 the entry of any additional money judgments of forfeiture, the
27 identification of all monies, properties and assets of any kind owned
28 and/or controlled by defendant, the liquidation of any item of the

1 Forfeitable Property in the manner required by the United States of
2 America in its sole discretion, the transmission of any item of the
3 Forfeitable Property to the United States of America upon request by
4 the USAO and the completion of any other legal documents required for
5 the transfer of title to the Forfeitable Property to the United
6 States of America.

7 f. To prevent the disbursement of the Forfeitable
8 Property without the authorization of the USAO, if such disbursements
9 are within defendant's direct or indirect control.

10 g. To the Court's entry of an order of forfeiture,
11 including any personal money judgment of forfeiture, at or before
12 sentencing with respect to the Forfeitable Property and to the
13 forfeiture of the Forfeitable Property. Defendant knowingly and
14 voluntarily waives (i) the requirements of Federal Rules of Criminal
15 Procedure 32.2 and 43(a) regarding notice of the forfeiture in the
16 charging instrument, announcement of the forfeiture at sentencing,
17 and incorporation of the forfeiture in the judgment; (ii) all
18 constitutional and statutory challenges in any manner (including by
19 direct appeal, habeas corpus, or any other means) to any forfeiture
20 carried out in accordance with this agreement on any grounds; and
21 (iii) all constitutional, legal and equitable defenses to the
22 forfeiture of the Forfeitable Property in any proceeding on any
23 grounds including, without limitation, that the forfeiture
24 constitutes an excessive fine or punishment. Defendant also
25 acknowledges and understands that the forfeiture of the Forfeitable
26 Property is part of the sentence that may be imposed in this case and
27 waives any failure by the Court to advise defendant of this, pursuant
28 to Rule 11(b)(1)(J), at the time defendant's guilty plea is accepted.

1 4. Defendant further agrees to cooperate fully with the USAO,
2 Federal Bureau of Investigation, United States Postal Service-Office
3 of Inspector General, IRS-Criminal Investigation, and California
4 Department of Insurance, and, as directed by the USAO, any other
5 federal, state, local, or foreign prosecuting, enforcement,
6 administrative, or regulatory authority. This cooperation requires
7 defendant to:

8 a. Respond truthfully and completely to all questions
9 that may be put to defendant, whether in interviews, before a grand
10 jury, or at any trial or other court proceeding.

11 b. Attend all meetings, grand jury sessions, trials or
12 other proceedings at which defendant's presence is requested by the
13 USAO or compelled by subpoena or court order.

14 c. Produce voluntarily all documents, records, or other
15 tangible evidence relating to matters about which the USAO, or its
16 designee, inquires.

17 d. If requested to do so by the USAO, act in an
18 undercover capacity to the best of defendant's ability in connection
19 with criminal investigations by federal, state, local, or foreign law
20 enforcement authorities, in accordance with the express instructions
21 of those law enforcement authorities. Defendant agrees not to act in
22 an undercover capacity, tape record any conversations, or gather any
23 evidence except after a request by the USAO and in accordance with
24 express instructions of federal, state, local, or foreign law
25 enforcement authorities.

26 5. For purposes of this agreement: (1) "Cooperation
27 Information" shall mean any statements made, or documents, records,
28 tangible evidence, or other information provided, by defendant

1 pursuant to defendant's cooperation under this agreement or pursuant
2 to the letter agreement previously entered into by the parties, dated
3 on or about December 11, 2017, as extended for subsequent proffer
4 sessions and designated cooperation-related document productions
5 prior to the effective date of this agreement (the "Letter
6 Agreement"); and (2) "Plea Information" shall mean any statements
7 made by defendant, under oath, at the guilty plea hearing and the
8 agreed to factual basis statement in this agreement.

9 THE USAO'S OBLIGATIONS

10 6. The USAO agrees to:

11 a. Not contest facts agreed to in this agreement.

12 b. Abide by all agreements regarding sentencing contained
13 in this agreement.

14 c. Except for criminal tax violations (including
15 conspiracy to commit such violations chargeable under 18 U.S.C.
16 § 371), not further criminally prosecute defendant for violations
17 arising out of defendant's conduct described in the agreed-to factual
18 basis set forth in paragraph 22 below and in the attached Exhibit B.
19 Defendant understands that the USAO is free to criminally prosecute
20 defendant for any other unlawful past conduct or any unlawful conduct
21 that occurs after the date of this agreement. Defendant agrees that
22 at the time of sentencing the Court may consider the uncharged
23 conduct in determining the applicable Sentencing Guidelines range,
24 the propriety and extent of any departure from that range, and the
25 sentence to be imposed after consideration of the Sentencing
26 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

27 d. Subject to paragraph 24, at the time of sentencing,
28 provided that defendant demonstrates an acceptance of responsibility

1 for the offense up to and including the time of sentencing, recommend
2 a two-level reduction in the applicable Sentencing Guidelines offense
3 level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary,
4 move for an additional one-level reduction if available under that
5 section.

6 e. Recommend that defendant be sentenced to a term of
7 imprisonment no higher than the low end of the applicable Sentencing
8 Guidelines range, provided that the offense level used by the Court
9 to determine that range is 27 or higher. For purposes of this
10 agreement, the low end of the Sentencing Guidelines range is that
11 defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A,
12 without regard to reductions in the term of imprisonment that may be
13 permissible through the substitution of community confinement or home
14 detention as a result of the offense level falling within Zone B or
15 Zone C of the Sentencing Table.

16 f. To the extent paid prior to defendant's sentencing,
17 credit any amount defendant paid to resolve any civil claims arising
18 out of the conduct set forth in paragraph 22 and the attached Exhibit
19 B to this agreement, towards defendant's payment of the Forfeitable
20 Property.

21 7. The USAO further agrees:

22 a. Not to offer as evidence in its case-in-chief in the
23 above-captioned case or any other criminal prosecution that may be
24 brought against defendant by the USAO, or in connection with any
25 sentencing proceeding in any criminal case that may be brought
26 against defendant by the USAO, any Cooperation Information.

27 Defendant agrees, however, that the USAO may use both Cooperation
28 Information and Plea Information: (1) to obtain and pursue leads to

1 other evidence, which evidence may be used for any purpose, including
2 any criminal prosecution of defendant; (2) to cross-examine defendant
3 should defendant testify, or to rebut any evidence offered, or
4 argument or representation made, by defendant, defendant's counsel,
5 or a witness called by defendant in any trial, sentencing hearing, or
6 other court proceeding; and (3) in any criminal prosecution of
7 defendant for false statement, obstruction of justice, or perjury.

8 b. Not to use Cooperation Information against defendant
9 at sentencing for the purpose of determining the applicable guideline
10 range, including the appropriateness of an upward departure, or the
11 sentence to be imposed, and to recommend to the Court that
12 Cooperation Information not be used in determining the applicable
13 guideline range or the sentence to be imposed. Defendant
14 understands, however, that Cooperation Information will be disclosed
15 to the probation office and the Court, and that the Court may use
16 Cooperation Information for the purposes set forth in U.S.S.G.
17 § 1B1.8(b) and for determining the sentence to be imposed.

18 c. In connection with defendant's sentencing, to bring to
19 the Court's attention the nature and extent of defendant's
20 cooperation.

21 d. If the USAO determines, in its exclusive judgment,
22 that defendant has both complied with defendant's obligations under
23 paragraphs 2 through 4 above and provided substantial assistance to
24 law enforcement in the prosecution or investigation of another
25 ("substantial assistance"), to move the Court pursuant to U.S.S.G.
26 § 5K1.1 to fix an offense level and corresponding guideline range
27 below that otherwise dictated by the sentencing guidelines, and to
28 recommend a term of imprisonment within this reduced range. In

1 making this determination and determining the extent of any motion,
2 the government may take into account benefits conferred to defendant
3 as a result of this plea agreement.

4 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

5 8. Defendant understands the following:

6 a. Any knowingly false or misleading statement by
7 defendant will subject defendant to prosecution for false statement,
8 obstruction of justice, and perjury and will constitute a breach by
9 defendant of this agreement.

10 b. Nothing in this agreement requires the USAO or any
11 other prosecuting, enforcement, administrative, or regulatory
12 authority to accept any cooperation or assistance that defendant may
13 offer, or to use it in any particular way.

14 c. Defendant cannot withdraw defendant's guilty plea if
15 the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a
16 reduced guideline range or if the USAO makes such a motion and the
17 Court does not grant it or if the Court grants such a USAO motion but
18 elects to sentence above the reduced range.

19 d. The USAO's determination whether defendant has
20 provided substantial assistance will not depend in any way on whether
21 the government prevails at any trial or court hearing in which
22 defendant testifies or in which the government otherwise presents
23 information resulting from defendant's cooperation.

24 NATURE OF THE OFFENSES

25 9. Defendant understands that for defendant to be guilty of
26 the crime charged in count one of the information, that is,
27 conspiracy, in violation of Title 18, United States Code, Section
28 371, the following must be true: (1) between in or about 1998 and in

1 or about March 2013, there was an agreement between two or more
2 persons to commit violations of Title 18, United States Code,
3 Sections 1341, 1343, and 1346 (Honest Services Mail and Wire Fraud);
4 Title 18, United States Code, Section 1952(a)(3) (Interstate Travel
5 in Aid of Bribery); Title 18, United States Code, Section 1957
6 (Monetary Transactions in Property Derived from Specified Unlawful
7 Activity); and Title 42, United States Code, Section 1320a-7b(b)(1),
8 (b)(2) (Solicitation/Receipt and Offering/Paying Kickbacks in
9 Connection with a Federal Health Care Program); (2) the defendant
10 became a member of the conspiracy knowing of at least one of its
11 objects and intending to help accomplish it; and (3) one of the
12 members of the conspiracy performed at least one overt act for the
13 purpose of carrying out the conspiracy.

14 10. Defendant understands that Honest Services Mail and Wire
15 Fraud, in violation of Title 18, United States Code, Sections 1341
16 and 1346, and 1343 and 1346, each an object of the conspiracy charged
17 in the information, has the following elements: (1) the defendant
18 devised or participated in a scheme or plan to deprive a patient of
19 his or her right to honest services; (2) the scheme or plan included
20 payments of bribes and kickbacks to medical professionals in exchange
21 for medical services or items; (3) the medical professionals owed a
22 fiduciary duty to the patients; (4) the defendant acted with the
23 intent to defraud by depriving the patients of their right of honest
24 services of the medical professionals; (5) the defendant's act was
25 material, that is, it had a natural tendency to influence, or was
26 capable of influencing, a person's acts; and (6) the defendant used,
27 or caused someone to use, the mails and a wire communication to carry
28 out or attempt to carry out the scheme or plan.

1 11. Defendant understands that Interstate Travel in Aid of
2 Bribery, in violation of Title 18, United States Code, Section
3 1952(a)(3), one of the objects of the conspiracy charged in the
4 information, has the following elements: (1) defendant used the mail
5 or a facility of interstate commerce with the intent to promote,
6 manage, establish, or carry on, or facilitate the promotion,
7 management, establishment, or carrying on, of unlawful activity,
8 specifically payment and receipt of kickbacks in violation of
9 California Business & Professions Code § 650 and California Insurance
10 Code § 750; and (2) after doing so, defendant performed or attempted
11 to perform an act to promote, manage, establish, or carry on, or
12 facilitate the promotion, management, establishment, or carrying on,
13 of such unlawful activity.

14 12. Defendant understands that Transactional Money Laundering,
15 in violation of Title 18, United States Code, Section 1957, one of
16 the objects of the conspiracy charged in the information, has the
17 following elements: (1) the defendant knowingly engaged or attempted
18 to engage in a monetary transaction; (2) the defendant knew the
19 transaction involved criminally derived property; (3) the property
20 had a value greater than \$10,000; (4) the property was, in fact,
21 derived from specified unlawful activity, namely, honest services
22 mail or wire fraud, health care fraud, or illegal kickbacks for
23 health care referrals; and (5) the transaction occurred in the United
24 States.

25 13. Defendant understands that Payment or Receipt of Kickbacks
26 in Connection with a Federal Health Care Program, in violation of
27 Title 42, United States Code, Sections 1320a-7b(b)(2) and (b)(1),
28 each an object of the conspiracy charged in the information, has the

1 following elements: (1) defendant knowingly and willfully paid or
2 received remuneration, directly or indirectly, in cash or in kind, to
3 or from another person; (2) the remuneration was given to induce that
4 person to refer an individual for the furnishing or arranging for the
5 furnishing of any item or service for which payment may be made in
6 whole or in part under a Federal health care program; and
7 (3) defendant knew that such payment of remuneration was illegal.

8 14. Defendant understands that for defendant to be guilty of
9 Receipt of Kickbacks in Connection with a Federal Health Care
10 Program, in violation of Title 42, United States Code, Sections
11 1320a-7b(b)(1), as charged in count two of the information, has the
12 following elements: (1) defendant knowingly and willfully received
13 remuneration, directly or indirectly, in cash or in kind, from
14 another person; (2) the remuneration was given to induce defendant to
15 refer an individual for the furnishing or arranging for the
16 furnishing of any item or service for which payment may be made in
17 whole or in part under a Federal health care program; and
18 (3) defendant knew that such payment of remuneration was illegal.

19 PENALTIES AND RESTITUTION

20 15. Defendant understands that the statutory maximum sentence
21 that the Court can impose for a violation of Title 18, United States
22 Code, Section 371, as charged in count one of the information, is:
23 five years' imprisonment, a three-year period of supervised release;
24 a fine of \$250,000 or twice the gross gain or gross loss resulting
25 from the offense, whichever is greater; and a mandatory special
26 assessment of \$100.

27 16. Defendant understands that the statutory maximum sentence
28 that the Court can impose for a violation of Title 42, United States

1 Code, Section 1320a-7b(b)(1)(A), is: five years' imprisonment; a
2 three-year period of supervised release; a fine of \$250,000 or twice
3 the gross gain or gross loss resulting from the offense, whichever is
4 greatest; and a mandatory special assessment of \$100.

5 17. Defendant therefore understands that the total maximum
6 sentence for all offenses to which defendant is pleading guilty is:
7 ten years' imprisonment; a three-year period of supervised release; a
8 fine of \$500,000 or twice the gross gain or gross loss resulting from
9 the offense, whichever is greatest; and a mandatory special
10 assessment of \$200.

11 18. Defendant understands that defendant will be required to
12 pay full restitution to the victims of the offenses to which
13 defendant is pleading guilty. Defendant agrees that, in return for
14 the USAO's compliance with its obligations under this agreement, the
15 Court may order restitution to persons other than the victims of the
16 offenses to which defendant is pleading guilty and in amounts greater
17 than those alleged in the counts to which defendant is pleading
18 guilty. In particular, defendant agrees that the Court may order
19 restitution to any victim of any of the following for any losses
20 suffered by that victim as a result: (a) any relevant conduct, as
21 defined in U.S.S.G. § 1B1.3, in connection with the offenses to which
22 defendant is pleading guilty; and (b) any charges not prosecuted
23 pursuant to this agreement as well as all relevant conduct, as
24 defined in U.S.S.G. § 1B1.3, in connection with those charges. The
25 parties further agree that any amount forfeited under this agreement
26 and/or paid in order to resolve civil claims arising from the conduct
27 set forth in paragraph 22 and the attached Exhibit B to this
28 agreement shall be credited towards defendant's payment of any

1 restitution obligation the Court may order, and that any amount
2 actually paid as restitution shall be credited towards the payment of
3 the Forfeitable Property. The parties also agree that payments made
4 to the government in satisfaction of any civil resolution of claims
5 filed under the False Claims Act, 31 U.S.C. § 3729, based upon the
6 conduct set forth in forth in paragraph 22 and the attached Exhibit
7 B, shall be deemed payments toward restitution.

8 19. Defendant understands that supervised release is a period
9 of time following imprisonment during which defendant will be subject
10 to various restrictions and requirements. Defendant understands that
11 if defendant violates one or more of the conditions of any supervised
12 release imposed, defendant may be returned to prison for all or part
13 of the term of supervised release authorized by statute for the
14 offense that resulted in the term of supervised release, which could
15 result in defendant serving a total term of imprisonment greater than
16 the statutory maximum stated above.

17 20. Defendant understands that, by pleading guilty, defendant
18 may be giving up valuable government benefits and valuable civic
19 rights, such as the right to vote, the right to possess a firearm,
20 the right to hold office, and the right to serve on a jury.
21 Defendant understands that once the court accepts defendant's guilty
22 pleas, it will be a federal felony for defendant to possess a firearm
23 or ammunition. Defendant understands that the conviction in this
24 case may also subject defendant to various other collateral
25 consequences, including but not limited to revocation of probation,
26 parole, or supervised release in another case, mandatory exclusion
27 from providing services for any federal health care benefit program
28 for at least five years, and suspension or revocation of a

1 professional license. Defendant understands that unanticipated
2 collateral consequences will not serve as grounds to withdraw
3 defendant's guilty pleas.

4 21. Defendant understands that, if defendant is not a United
5 States citizen, the felony convictions in this case may subject
6 defendant to: removal, also known as deportation, which may, under
7 some circumstances, be mandatory; denial of citizenship; and denial
8 of admission to the United States in the future. The court cannot,
9 and defendant's attorney also may not be able to, advise defendant
10 fully regarding the immigration consequences of the felony
11 convictions in this case. Defendant understands that unexpected
12 immigration consequences will not serve as grounds to withdraw
13 defendant's guilty pleas.

14 FACTUAL BASIS

15 22. Defendant admits that defendant is, in fact, guilty of the
16 offenses to which defendant is agreeing to plead guilty. Defendant
17 and the USAO agree to the statement of facts provided in the attached
18 Exhibit B and agree that this statement of facts is sufficient to
19 support pleas of guilty to the charges described in this agreement
20 and to establish the Sentencing Guidelines factors set forth in
21 paragraph 24 below, but is not meant to be a complete recitation of
22 all facts relevant to the underlying criminal conduct or all facts
23 known to either party that relate to that conduct.

24 SENTENCING FACTORS

25 23. Defendant understands that in determining defendant's
26 sentence the Court is required to calculate the applicable Sentencing
27 Guidelines range and to consider that range, possible departures
28 under the Sentencing Guidelines, and the other sentencing factors set

1 forth in 18 U.S.C. § 3553(a). Defendant understands that the
 2 Sentencing Guidelines are advisory only, that defendant cannot have
 3 any expectation of receiving a sentence within the calculated
 4 Sentencing Guidelines range, and that after considering the
 5 Sentencing Guidelines and the other § 3553(a) factors, the Court will
 6 be free to exercise its discretion to impose any sentence it finds
 7 appropriate up to the maximum set by statute for the offenses of
 8 conviction.

9 24. Defendant and the USAO stipulate and agree to the following
 10 applicable Sentencing Guidelines factors:

| | | | |
|----|---|-----|-----------------------------|
| 11 | Base Offense Level: | 8 | [U.S.S.G. § 2B4.1(a)(2)] |
| 12 | <u>Specific Offense</u> | | |
| 13 | <u>Characteristics</u> | | |
| 14 | Value of Improper Benefit Conferred to Pacific Hospital (between \$9.5M and \$25M): | +20 | [U.S.S.G. § 2B4.1(b)(1)(B)] |
| 15 | Abuse of Position of Trust: | +2 | [U.S.S.G. § 3B1.3] |
| 16 | Acceptance of Responsibility: | -3 | [U.S.S.G. § 3E1.1(a)] |
| 17 | <u>Total offense level:</u> | 27 | |

18
 19 The USAO will agree to a two-level downward adjustment for acceptance
 20 of responsibility (and, if applicable, move for an additional one-
 21 level downward adjustment under U.S.S.G. § 3E1.1(b)) only if the
 22 conditions set forth in paragraphs 2 through 4 and 7(d) are met and
 23 if defendant has not committed, and refrains from committing, acts
 24 constituting obstruction of justice within the meaning of U.S.S.G. §
 25 3C1.1, as discussed below. Subject to paragraph 39 below, defendant
 26 and the USAO agree not to seek, argue, or suggest in any way, either
 27 orally or in writing, that any other specific offense
 28 characteristics, adjustments, or departures relating to the offense

1 level be imposed. Defendant agrees, however, that if, after signing
2 this agreement but prior to sentencing, defendant were to commit an
3 act, or the USAO were to discover a previously undiscovered act
4 committed by defendant prior to signing this agreement, which act, in
5 the judgment of the USAO, constituted obstruction of justice within
6 the meaning of U.S.S.G. § 3C1.1, the USAO would be free to seek the
7 enhancement set forth in that section and to argue that defendant is
8 not entitled to a downward adjustment for acceptance of
9 responsibility under U.S.S.G. § 3E1.1.

10 25. Defendant understands that there is no agreement as to
11 defendant's criminal history or criminal history category.

12 26. Defendant and the USAO reserve the right to argue for a
13 sentence outside the sentencing range established by the Sentencing
14 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
15 (a)(2), (a)(3), (a)(6), and (a)(7).

16 WAIVER OF STATUTE OF LIMITATIONS

17 27. Having been fully advised by defendant's attorney regarding
18 application of the statute of limitations to the offenses to which
19 defendant is pleading guilty, defendant hereby knowingly,
20 voluntarily, and intelligently waives, relinquishes, and gives up:
21 (a) any right that defendant might have not to be prosecuted for the
22 offenses to which defendant is pleading guilty because of the
23 expiration of the statute of limitations for those offenses prior to
24 the filing of the information alleging those offenses; and (b) any
25 defense, claim, or argument defendant could raise or assert that
26 prosecution of the offenses to which defendant is pleading guilty is
27 barred by the expiration of the applicable statute of limitations,
28 pre-indictment delay, or any speedy trial violation.

WAIVER OF CONSTITUTIONAL RIGHTS

28. Defendant understands that by pleading guilty, defendant gives up the following rights:

a. The right to persist in a plea of not guilty.

b. The right to a speedy and public trial by jury.

c. The right to be represented by counsel - and if necessary have the court appoint counsel - at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel - and if necessary have the court appoint counsel - at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTIONS

29. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up

1 any right to appeal defendant's convictions on the offenses to which
2 defendant is pleading guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 30. Defendant agrees that, provided the Court imposes a total
5 term of imprisonment on all counts of conviction at or below the
6 high-end of the Sentencing Guidelines range corresponding to a total
7 offense level of 27 and the criminal history category determined by
8 the Court, defendant gives up the right to appeal all of the
9 following: (a) the procedures and calculations used to determine and
10 impose any portion of the sentence; (b) the term of imprisonment
11 imposed by the Court; (c) the fine imposed by the court, provided it
12 is within the statutory maximum; (d) the amount and terms of any
13 restitution order, provided it requires payment of no more than
14 \$10,000,000 (ten million dollars); (e) the term of probation or
15 supervised release imposed by the Court, provided it is within the
16 statutory maximum; and (f) any of the following conditions of
17 probation or supervised release imposed by the Court: the conditions
18 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;
19 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and
20 3583(d); and the alcohol and drug use conditions authorized by 18
21 U.S.C. § 3563(b)(7).

22 31. Defendant also gives up any right to bring a post-
23 conviction collateral attack on the convictions or sentence,
24 including any order of restitution, except a post-conviction
25 collateral attack based on a claim of ineffective assistance of
26 counsel, a claim of newly discovered evidence, or an explicitly
27 retroactive change in the applicable Sentencing Guidelines,
28 sentencing statutes, or statutes of conviction.

1 32. The USAO agrees that, provided all portions of the sentence
2 are at or below the total statutory maximum specified above, the USAO
3 gives up its right to appeal any portion of the sentence.

4 RESULT OF WITHDRAWAL OF GUILTY PLEAS

5 33. Defendant agrees that if, after entering guilty pleas
6 pursuant to this agreement, defendant seeks to withdraw and succeeds
7 in withdrawing any of defendant's guilty pleas on any basis other
8 than a claim and finding that entry into this plea agreement was
9 involuntary, then (a) the USAO will be relieved of all of its
10 obligations under this agreement, including in particular its
11 obligations regarding the use of Cooperation Information; (b) in any
12 investigation, criminal prosecution, or civil, administrative, or
13 regulatory action, defendant agrees that any Cooperation Information
14 and any evidence derived from any Cooperation Information shall be
15 admissible against defendant, and defendant will not assert, and
16 hereby waives and gives up, any claim under the United States
17 Constitution, any statute, or any federal rule, that any Cooperation
18 Information or any evidence derived from any Cooperation Information
19 should be suppressed or is inadmissible; and (c) should the USAO
20 choose to pursue any charge that was not filed as a result of this
21 agreement, then (i) any applicable statute of limitations will be
22 tolled between the date of defendant's signing of this agreement and
23 the filing commencing any such action; and (ii) defendant waives and
24 gives up all defenses based on the statute of limitations, any claim
25 of pre-indictment delay, or any speedy trial claim with respect to
26 any such action, except to the extent that such defenses existed as
27 of the date of defendant's signing this agreement.

1 EFFECTIVE DATE OF AGREEMENT

2 34. This agreement is effective upon signature and execution of
3 all required certifications by defendant, defendant's counsel, and an
4 Assistant United States Attorney.

5 BREACH OF AGREEMENT

6 35. Defendant agrees that if defendant, at any time after the
7 effective date of this agreement, knowingly violates or fails to
8 perform any of defendant's obligations under this agreement ("a
9 breach"), the USAO may declare this agreement breached. For example,
10 if defendant knowingly, in an interview, before a grand jury, or at
11 trial, falsely accuses another person of criminal conduct or falsely
12 minimizes defendant's own role, or the role of another, in criminal
13 conduct, defendant will have breached this agreement. All of
14 defendant's obligations are material, a single breach of this
15 agreement is sufficient for the USAO to declare a breach, and
16 defendant shall not be deemed to have cured a breach without the
17 express agreement of the USAO in writing. If the USAO declares this
18 agreement breached, and the Court finds such a breach to have
19 occurred, then:

20 a. If defendant has previously entered a guilty plea
21 pursuant to this agreement, defendant will not be able to withdraw
22 the guilty plea.

23 b. The USAO will be relieved of all its obligations under
24 this agreement; in particular, the USAO: (i) will no longer be bound
25 by any agreements concerning sentencing and will be free to seek any
26 sentence up to the statutory maximum for the crime to which defendant
27 has pleaded guilty; and (ii) will no longer be bound by any agreement
28 regarding the use of Cooperation Information and will be free to use

1 any Cooperation Information in any way in any investigation, criminal
2 prosecution, or civil, administrative, or regulatory action.

3 c. The USAO will be free to criminally prosecute
4 defendant for false statement, obstruction of justice, and perjury
5 based on any knowingly false or misleading statement by defendant.

6 d. In any investigation, criminal prosecution, or civil,
7 administrative, or regulatory action: (i) defendant will not assert,
8 and hereby waives and gives up, any claim that any Cooperation
9 Information was obtained in violation of the Fifth Amendment
10 privilege against compelled self-incrimination; and (ii) defendant
11 agrees that any Cooperation Information and any Plea Information, as
12 well as any evidence derived from any Cooperation Information or any
13 Plea Information, shall be admissible against defendant, and
14 defendant will not assert, and hereby waives and gives up, any claim
15 under the United States Constitution, any statute, Rule 410 of the
16 Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
17 Criminal Procedure, or any other federal rule, that any Cooperation
18 Information, any Plea Information, or any evidence derived from any
19 Cooperation Information or any Plea Information should be suppressed
20 or is inadmissible.

21 36. Following the Court's finding of a knowing breach of this
22 agreement by defendant, should the USAO choose to pursue any charge
23 that was not filed as a result of this agreement, then:

24 a. Defendant agrees that any applicable statute of
25 limitations is tolled between the date of defendant's signing of this
26 agreement and the filing commencing any such action.

27 b. Defendant waives and gives up all defenses based on
28 the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

5 37. Defendant agrees that if any count of conviction is
6 vacated, reversed, or set aside, the USAO may: (a) ask the Court to
7 resentence defendant on any remaining count of conviction, with both
8 the USAO and defendant being released from any stipulations regarding
9 sentencing contained in this agreement, (b) ask the Court to void the
10 entire plea agreement and vacate defendant's guilty plea on any
11 remaining count of conviction, with both the USAO and defendant being
12 released from all their obligations under this agreement, or
13 (c) leave defendant's remaining conviction, sentence, and plea
14 agreement intact. Defendant agrees that the choice among these three
15 options rests in the exclusive discretion of the USAO.

16 COURT AND PROBATION OFFICE NOT PARTIES

17 38. Defendant understands that the Court and the United States
18 Probation Office are not parties to this agreement and need not
19 accept any of the USAO's sentencing recommendations or the parties'
20 agreements to facts or sentencing factors.

21 39. Defendant understands that both defendant and the USAO are
22 free to: (a) supplement the facts by supplying relevant information
23 to the United States Probation Office and the Court, (b) correct any
24 and all factual misstatements relating to the Court's Sentencing
25 Guidelines calculations and determination of sentence, and (c) argue
26 on appeal and collateral review that the Court's Sentencing
27 Guidelines calculations and the sentence it chooses to impose are not
28 error, although each party agrees to maintain its view that the

1 calculations in paragraph 24 above are consistent with the facts of
2 this case. While this agreement permits both the USAO and defendant
3 to submit full and complete factual information to the United States
4 Probation Office and the Court, even if that factual information may
5 be viewed as inconsistent with the facts agreed to in this agreement,
6 this agreement does not affect defendant's and the USAO's obligations
7 not to contest the facts agreed to in this agreement.

8 40. Defendant understands that even if the Court ignores any
9 sentencing recommendation, finds facts or reaches conclusions
10 different from those agreed to, and/or imposes any sentence up to the
11 maximum established by statute, defendant cannot, for that reason,
12 withdraw defendant's guilty pleas, and defendant will remain bound to
13 fulfill all defendant's obligations under this agreement. Defendant
14 understands that no one -- not the prosecutor, defendant's attorney,
15 or the Court -- can make a binding prediction or promise regarding
16 the sentence defendant will receive, except that it will be within
17 the statutory maximum.

18 NO ADDITIONAL AGREEMENTS

19 41. This agreement supersedes and replaces the Letter
20 Agreement. Defendant understands that, except as set forth in this
21 agreement, there are no promises, understandings, or agreements
22 between the USAO and defendant or defendant's attorney, and that no
23 additional promise, understanding, or agreement may be entered into
24 unless in a writing signed by all parties or on the record in court.

25 ///

26 ///

27 ///

28

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

42. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

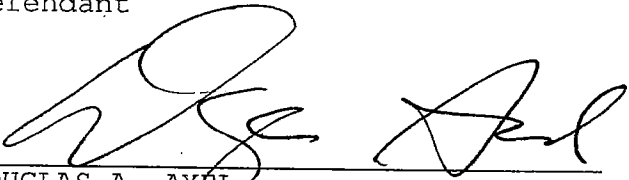
TRACY L. WILKISON
Attorney for the United States,
Acting Under Authority Conferred
by 28 U.S.C. § 515

ASHWIN JANAKIRAM
Assistant United States Attorney

Date

DANIEL CAPEN
Defendant

Date


DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

Date 4/20/18

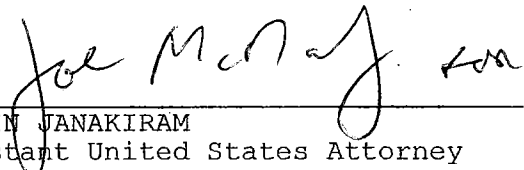
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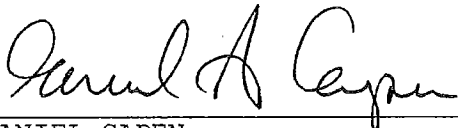
AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

TRACY L. WILKISON
Attorney for the United States,
Acting Under Authority Conferred
by 28 U.S.C. § 515


ASHWIN JANAKIRAM
Assistant United States Attorney


Date


DANIEL CAPEN
Defendant

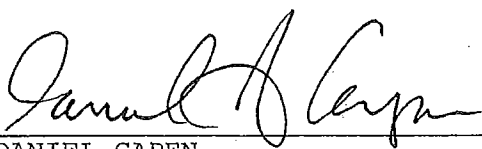

Date

DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.



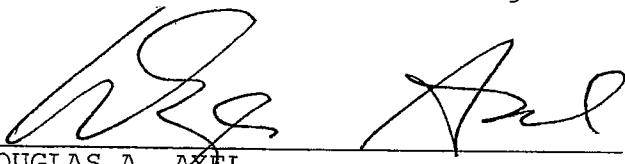
DANIEL CAPEN
Defendant

4.19.18

Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am DANIEL CAPEN's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.


DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

4/20/18
Date

EXHIBIT B**STATEMENT OF FACTS**Relevant Entities

Healthsmart Pacific Inc., doing business as Pacific Hospital of Long Beach ("Pacific Hospital" or "PHLB"), was a hospital located in Long Beach, California, specializing in surgeries, particularly spinal and orthopedic surgeries. From in or around 1997 to in or around June 2004, Pacific Hospital was owned by majority shareholder Michael D. Drobot ("Drobot").

On or about September 27, 2005, unindicted co-conspirator A ("UCC-A") effectively became the sole shareholder of Pacific Hospital through his ownership and control of the "[UCC-A] Family Trust," which, in turn, owned Abrazos Healthcare, Inc. ("Abrazos"), a privately held corporation formed and incorporated in February 2005 for the purpose of purchasing shares of Pacific Hospital from Drobot. UCC-A, through Abrazos, also acquired other interests in affiliated entities previously owned and/or controlled by Drobot. Between 1998 and March 2013, Pacific Hospital was operated and/or controlled by Drobot and UCC-A.

In about June 2006, UCC-A offered defendant DANIEL CAPEN ("defendant"), an orthopedic surgeon, the opportunity to purchase 10% of the common stock of Abrazos to further cement defendant's relationship with Pacific Hospital and incentivize defendant's referral of patients for surgeries and other medical services to Pacific Hospital. While defendant acquired 10% of the common stock of Abrazos, which effectively gave defendant a 10% ownership interest in Pacific Hospital, he did not operate or control the hospital and did not ultimately profit from his investment.

1 On or about October 12, 2010, Drobot, through an affiliated
2 entity, purchased UCC-A's shares of Abrazos, which effectively
3 provided Drobot a 90% ownership interest in Pacific Hospital, while
4 defendant continued to maintain his 10% ownership interest in Pacific
5 Hospital.

6 Pacific Specialty Physician Management, Inc. ("PSPM") was a
7 corporation headquartered in Newport Beach, California, that provided
8 administrative and management services for physicians' offices,
9 including the management of the Southwestern Orthopedic Medical
10 Corporation, doing business as Downey Orthopedic Medical Group
11 ("Downey Ortho"). Defendant CAPEN, along with other physicians
12 affiliated with Downey Ortho, maintained a medical practice at
13 various Downey Ortho clinic locations.

14 California Pharmacy Management LLC ("CPM") was a limited
15 liability company, headquartered in Newport Beach, California, that
16 operated and managed a pharmaceutical dispensing program in medical
17 clinics for physicians. Drobot and Michael R. Drobot Jr. ("Drobot
18 Jr.") owned and/or operated CPM.

19 Industrial Pharmacy Management LLC ("IPM") was a limited
20 liability company, headquartered in Newport Beach, California. IPM
21 operated and managed a pharmaceutical dispensing program in medical
22 clinics for physicians through the use of pharmaceutical management
23 agreements and claims purchase agreements. Drobot principally owned
24 and controlled IPM until approximately 2010, when Drobot Jr. assumed
25 ownership and control of IPM.

26 International Implants LLC ("I2") was a limited liability
27 company, headquartered in Newport Beach, California, that purchased
28 implantable medical hardware for use in spinal surgeries from

1 original manufacturers and sold them to hospitals, particularly
2 Pacific Hospital, starting around July 2008. I2 was effectively
3 owned and/or controlled by Drobot.

4 PHLB, PSPM, CPM, IPM, and I2 are collectively referred to herein
5 as "Pacific Hospital and Affiliated Entities."

6 The Kickback Arrangements

7 Defendant was an orthopedic surgeon specializing in spinal
8 surgeries and owed a fiduciary duty to his patients. Beginning in or
9 around 1998 and continuing through at least March 2013, defendant,
10 along with Drobot, UCC-A, Drobot Jr., James Canedo ("Canedo"), George
11 William Hammer ("Hammer"), Timothy Hunt ("Hunt"), and others, agreed
12 to participate and did, in fact, participate in an illegal
13 arrangement to pay and receive kickbacks in exchange for referring
14 and performing surgeries and other patient-related services at
15 Pacific Hospital and Affiliated Entities. As part of the agreement,
16 defendant agreed to receive proceeds of the kickback scheme, and
17 subsequently participate in financial transactions over \$10,000
18 involving such proceeds.

19 To facilitate the payment of kickbacks, Drobot and UCC-A caused
20 Pacific Hospital and Affiliated Entities to enter into agreements
21 with physicians, including defendant, and other medical professionals
22 ("Pacific Kickback Recipients") that were used to pay kickbacks in
23 exchange for the referral of spinal surgeries, other types of
24 surgeries, magnetic resonance imaging ("MRI"), toxicology ("UDT"),
25 durable medical equipment, and other services (the "Kickback Tainted
26 Surgeries and Services") to be performed at Pacific Hospital and
27 Affiliated Entities.

1 In many cases, the agreements would be reduced to written
2 contracts, including, among others, collection agreements, option
3 agreements, research and development agreements, lease and rental
4 agreements, consulting agreements, marketing agreements, management
5 agreements, and pharmacy agreements. The written agreements would
6 not specify that one purpose for the agreements would be to induce
7 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and
8 Services to Pacific Hospital and Affiliated Entities; indeed, some of
9 the agreements would specifically state that referrals were not
10 contemplated or a basis for the agreement. Additionally, the value
11 or consideration discussed as part of these arrangements would be
12 paid, entirely or in part, depending on the arrangement, to cause
13 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and
14 Services to Pacific Hospital and Affiliated Entities. Relatedly, the
15 written contracts would generally allow for remuneration to Pacific
16 Kickback Recipients far in excess of any reasonable fair market value
17 assessment of legitimate services or things of value purportedly
18 contracted for -- to the extent calculated without regard to the
19 value of the Kickback Tainted Surgeries and Services.

20 Defendant received remuneration in exchange for referring and
21 performing Kickback Tainted Surgeries and Services at Pacific
22 Hospital and Affiliated Entities. These illegal kickbacks and bribes
23 were provided to defendant under the guise of various arrangements,
24 both written and oral, including a management agreement with PSPM; a
25 medical directorship with Abrazos; payments from Pacific Hospital for
26 UDT referrals obtained through PMR; and payments representing
27 purported consulting fees, bonuses, and dividends.

1 For example, under the PSPM management agreement, starting in or
2 about 1998 and continuing until at least March 2013, PSPM facilitated
3 the payment of kickbacks to defendant by subsidizing medical practice
4 costs that would have otherwise been passed on to, and reduced the
5 profits of, defendant and Downey Ortho. More specifically, defendant
6 and other physicians at Downey Ortho entered into an agreement with
7 PSPM to provide management and administration of day-to-day business
8 operations, including equipment and furnishings, billing and
9 collection services, rent, administrative staff salaries, and other
10 miscellaneous expenses. In exchange for these management and
11 administrative services, PSPM was entitled to a percentage of Downey
12 Ortho's monthly collections from patient billings, and, in turn, an
13 allocated share of the monthly collections for defendant and other
14 co-conspirators practicing at Downey Ortho.

15 According to the terms of the management agreement between PSPM
16 and Downey Ortho, PSPM's management fee, which was calculated as a
17 specified percentage of Downey Ortho's monthly collections, was
18 purportedly: (1) "projected to be sufficient to enable PSPM to
19 recover all of the operating expenses of PSPM [and] generate a
20 reasonable return on investment[;]" and (2) calculated "without
21 taking into account . . . the volume or value of any referrals of
22 business from . . . [Downey Ortho] to PSPM (or its affiliates)[.]"
23 The PSPM management agreement further provided:

24 No amount paid hereunder is intended to be, nor shall it be
25 construed to be, an inducement or payment for referral of,
26 or recommending referral of, patients by [Downey Ortho] to
27 PSPM (or its affiliates)[.] In addition, the management
28 fee charged hereunder does not include any discount,

1 rebate, kickback, or other reduction in charge, and the
2 management fee charged hereunder is not intended to be, nor
3 shall it be construed to be, an inducement or payment for
4 referral, or recommendation of referral, of patients by
5 [Downey Ortho] [to] PSPM (or its affiliates)[.]

6 In reality, however, PSPM's management fee was "upside down,"
7 such that the percentage of monthly collections Downey Ortho paid to
8 PSPM would cover only a fraction of PSPM's expenses associated with
9 the management of Downey Ortho. Defendant, other Downey Ortho-
10 Affiliated Physicians, Drobot, UCC-A, and other co-conspirators
11 understood that PSPM's percentage of the monthly collections would
12 not be enough to pay the monthly operating expenses and other costs
13 associated with managing Downey Ortho, and that the recurring PSPM
14 deficit would allow defendant and other Downey Ortho physicians to
15 retain a larger share of monthly Downey Ortho collections. Defendant
16 and his co-conspirators understood that PSPM was willing to absorb
17 these losses because defendant and other Kickback Induced Surgeons
18 would refer Kickback Tainted Surgeries and Services to Pacific
19 Hospital and Affiliated Entities. Further, starting in mid-2008,
20 Drobot and other co-conspirators told defendant and Downey Otho's
21 other Kickback Induced Surgeons that they need to use I2 hardware in
22 surgeries at Pacific Hospital. The profits from I2 financed the PSPM
23 kickbacks and subsidized PSPM's losses.

24 The Kickback Induced Surgeries included surgeries reimbursed
25 under various federal health programs. For example, on or about
26 December 8, 2012, defendant performed surgery on patient G.G. As a
27 result, on or about January 7, 2013, Pacific Hospital mailed a claim
28 for the hospital-billing component of patient G.G.'s medical care to

1 DOL-OWCP, which administers a federal workers' compensation program
2 (the "FECA program"). On or about February 7, 2013, DOL-OWCP caused
3 a U.S. Treasury Check in the amount of \$147,263.46 to be mailed to
4 Pacific Hospital for reimbursement of various claims, including
5 \$57,445.81 related to the hospital-billing component of patient
6 G.G.'s medical care reimbursed under the FECA program.

7 Defendant understood that: (1) PSPM existed for Pacific
8 Hospital's benefit; (2) Pacific Hospital was closely affiliated with
9 PSPM; and (3) based on the value of Kickback Tainted Surgeries and
10 Services that defendant and other Downey Ortho physicians referred to
11 Pacific Hospital and Affiliated Entities, Pacific Hospital and
12 Affiliated Entities would subsidize the losses associated with PSPM's
13 management of Downey Ortho. Had defendant and his fellow Kickback
14 Induced Surgeons stopped referring and performing surgeries at
15 Pacific Hospital, defendant knew that the arrangement with PSPM would
16 be terminated.

17 Hunt was an orthopedic surgeon specializing in shoulder and knee
18 arthroscopy, who, starting in approximately June 2008, owned and
19 operated Allied Medical Group ("Allied Medical"), a medical practice
20 with clinics in Lawndale and Long Beach, California. As Hunt
21 historically referred spinal surgery candidates to defendant,
22 defendant, along with Drobot, UCC-A, and others, arranged for Drobot
23 to pay kickbacks and bribes to Hunt in exchange for Hunt referring
24 spinal surgeries to defendant that defendant would perform at Pacific
25 Hospital. More specifically, UCC-A and Drobot entered into various
26 contractual relationships with Hunt, including a loan, a
27 substantially below-market sublease, an option agreement, and
28 pharmacy dispensing contracts, to disguise remuneration paid to Hunt

1 to induce additional spinal surgery referrals to defendant. In
2 connection with Hunt's option agreement, for example, in
3 approximately January 2009, UCC-A, Hunt, and defendant met in UCC-A's
4 office to discuss the monthly volume of spinal surgery referrals from
5 Hunt to Capen. UCC-A and Hunt ultimately agreed that Hunt would be
6 paid approximately \$30,000 per month under a sham option contract to
7 induce and reward Hunt to refer a target of approximately three
8 spinal surgeries per month to defendant, who would perform such
9 surgeries at Pacific Hospital.

10 Defendant and his co-conspirators knew that the payment of
11 bribes and kickbacks for the referral of patients for medical
12 services was illegal. Defendant also understood the above-described
13 kickback and bribe payments were conditioned on his continued volume
14 of referrals to Pacific Hospital and Affiliated Entities. Moreover,
15 the payment of kickbacks for the referral of Kickback Tainted
16 Surgeries and Services performed at Pacific Hospital was to material
17 to health care benefit programs and patients. The use of interstate
18 wires and mailings to execute essential parts of the scheme was
19 foreseeable to defendant. Moreover, interstate wires and mailings
20 were used to execute essential parts of the scheme.

21 Between 1998 and April 2013, defendant referred or performed
22 Kickback Tainted Surgeries and Services comprising approximately \$142
23 million of the total amount Pacific Hospital billed to health care
24 benefit programs, and for which Pacific Hospital was paid
25 approximately \$56 million. The parties stipulate and agree that the
26 value of the benefit conferred to Pacific Hospital from the
27 arrangements with defendant, which were designed to steer Kickback
28

1 Tainted Surgeries and Services to the hospital and affiliated
2 entities, was between \$9.5 million and \$25 million.